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Report of the Working Group on Enforced or Involuntary Disappearances

Addendum

Study on enforced or involuntary disappearances and economic, social and cultural rights*

Summary

This study examines the indivisibility between economic, social and cultural rights, and civil and political rights in the case of enforced disappearances. Enforced disappearance, by its nature, violates economic, social and cultural rights of the disappeared person, of his or her family, and of others. In addition, those lacking the full enjoyment of economic, social and cultural rights are, in many instances, more vulnerable to becoming victims of enforced disappearance.

Furthermore, people who are active in promoting or exercising the enjoyment of economic, social and cultural rights are, in many contexts, at a greater risk of becoming victims of enforced disappearance than they would be if their economic, social and cultural rights were protected. In such circumstances, enforced disappearances are used as a tool to deter people from promoting and exercising economic, social and cultural rights.

Under the Declaration on the Protection of All Persons from Enforced Disappearance, States have an obligation to prevent and eradicate enforced disappearances and to provide reparations to all victims of enforced disappearances, taking into account the intrinsic connection between enforced disappearances and economic, social and cultural rights. Effective measures to prevent and eradicate enforced disappearances, and to provide reparation to the victims, require a comprehensive approach that encompasses proper

* The summary of the present report is circulated in all official languages. The report itself, which is annexed to the summary, is circulated in the language of submission only.

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Annex

[English only]

Study on enforced or involuntary disappearances and economic, social and cultural rights

Contents

		Page
I.	Introduction	4
II.	Enforced disappearances and economic, social and cultural rights	5
	A. Lack of enjoyment of economic, social and cultural rights, and the increased vulnerability to enforced disappearance	5
	B. Impact of enforced disappearances on the economic, social and cultural rights of the disappeared person	7
	C. Impact of enforced disappearances on the economic, social and cultural rights of the family or other dependants of the disappeared person	8
III.	Enforced disappearances in retaliation against those working on the promotion and protection of economic, social and cultural rights	10
IV.	The 1992 Declaration on the Protection of All Persons from Enforced Disappearance and economic, social and cultural rights	12
	A. State obligation to prevent, investigate and punish enforced disappearances through the promotion and protection of economic, social and cultural rights	13
	B. State obligation to provide adequate reparation and social assistance to the families for violations of economic, social and cultural rights as a result of enforced disappearances	16
	C. Social and other assistance	18
V.	Conclusions and recommendations	19

I. Introduction

1. Civil and political rights, and economic, social and cultural rights, are interrelated, interdependent and indivisible. The violation of one set of rights often involves violations of the other.[1] It is also well understood that the protection of civil and political rights is essential to the enjoyment of economic, social and cultural rights and vice versa. The preambles of the International Covenant on Civil and Political Rights and of the International Covenant on Economic, Social and Cultural Rights state that "in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights".[2] That indivisibility and interdependency is required to deepen the understanding on how enforced disappearances (often understood as merely violations of civil and political rights) relate to economic, social and cultural rights.

2. From its inception, the Working Group on Enforced or Involuntary Disappearances has recognized that enforced disappearances violate various economic, social and cultural rights and have a particularly negative impact on the enjoyment of such rights by the disappeared person, the family members of the disappeared person, and others.[3] The Working Group considers both the disappeared person and those who have suffered harm as a result of the disappearance to be victims of the enforced disappearance, as they suffer violations of a range of rights, including economic, social and cultural rights (A/HRC/22/45, para. 51). Similarly, the Working Group has made reference to issues related to the right to health, property and education, as well as a right to take part in cultural life and housing (A/HRC/WGEID/98/2 and A/HRC/WGEID/98/1). It has also often focused on the economic, social and cultural harm of enforced disappearances in respect of the right to reparation.[4] Finally, on several occasions the Working Group has highlighted the situation of extreme poverty in which victims of enforced disappearances live. Those extreme poverty conditions are considered both as a cause and a consequence of enforced disappearances (E/CN.4/1986/18/Add.1).

3. So far, however, the Working Group has not treated the relationship between enforced disappearances and economic, social and cultural rights in a comprehensive and systematic way.

4. In November 2013, the Working Group convened an expert consultation to discuss the relationship between enforced disappearance and economic, social and cultural rights.

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[1] See, for instance, the Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights in Vienna, on 25 June 1993, para. 5.

[2] Ibid.

[3] E/CN.4/1492, para.165. In one country report (E/CN.4/2006/56/Add.1, para. 59), this was particularly evident: "Another aspect of disappearances that has been underreported in the past and continues at the present time relates to the way in which acts of disappearance are perpetrated in conjunction with other gross violations, with targets drawn from among the most vulnerable groups in society. Numerous testimonies were received concerning these phenomena. The most common examples brought to our notice were: disappearances, combined with 'social cleansing' [...]; disappearances, subsequently combined with executions [...]; disappearances, combined with enforced displacement (taking place often mostly in rural areas, the objective being to dispossess victims of their land and properties); disappearances, combined with rape and other forms of sexual violence [...]; disappearances, combined with forced conscription recruitment (directed at children)".

[4] See, for instance, A/HRC/13/31/Add.1, paras. 47–66 and 107; A/HRC/16/48/Add.1, paras. 39–48 and 83-85; A/HRC/22/45/Add.1, paras. 44–48 and page 18.

and to identify challenges and best practices thereon. Based on the contributions from the expert consultation, its research and analysis of its practice, country reports and other activities, as well as those of other United Nations and international human rights bodies, the Working Group prepared the present report.

5. The main purpose of the report is to make the link between enforced disappearances and economic, social and cultural rights clearer and more explicit, and to shed light on how States should address this relationship.

6. The report examines not only the effect of enforced disappearances on the enjoyment of economic, social and cultural rights, but also the situation of human rights defenders and others who often become victims of enforced disappearances as a consequence of their work on those rights. Additionally, the report seeks to understand how the lack of effective enjoyment of economic, social and cultural rights is a factor leading or contributing to enforced disappearances.

7. In light of article 3 of the Declaration on the Protection of All Persons from Enforced Disappearance (hereinafter "the Declaration"), which urges States to take all effective measures to prevent and terminate acts of enforced disappearances, the report also discusses the measures that States should take to address infringements of economic, social and cultural rights of victims as cause and consequence of enforced disappearances.

II. Enforced disappearances and economic, social and cultural rights

A. Lack of enjoyment of economic, social and cultural rights, and the increased vulnerability to enforced disappearance

8. The lack of effective protection of certain economic, social and cultural rights may be a contributing factor to enforced disappearances. The Working Group and other bodies have documented that persons who live in poverty and lack the enjoyment of a number of economic, social and cultural rights are more vulnerable to becoming victims of enforced disappearances (E/CN.4/1986/Add.1, paras. 93–100 and 110).

9. The Committee on Economic, Social and Cultural Rights recognizes that "poverty may be defined as a human condition characterized by sustained or chronic deprivation of the resources, capabilities, choices, security and power necessary for the enjoyment of an adequate standard of living and other economic, social and cultural rights."[5] Consequently, people living in poverty often lack social integration, political recognition and legal and factual protection. This lack of security could extend to insufficient protection vis-à-vis a number of human rights violations, including enforced disappearance.[6] In fact, in many situations of conflict a high percentage of victims of enforced disappearance are concentrated in the poorest regions and the majority of the victims are poor.[7]

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[5] Committee on Economic, Social and Cultural Rights, Poverty and the International Covenant on Economic, Social and Cultural Rights, para. 8, Statement adopted by the Committee on Economic, Social and Cultural Rights on 4 May 2001, E/C.12/2001/10.

[6] Commission for Historical Clarification in Guatemala, Final Report, Memory of Silence, para. 2158 (explaining that: "The greater vulnerability of those who inhabited the rural areas, mainly generated by their ethnicity, poverty and lack of civil public institutions to guarantee the protection of their rights, offered greater opportunities to the State to execute open and massive repressive operations".)

[7] Truth and Reconciliation Commission of Peru, Final Report – General Conclusions (2003), para. 4, 9.

10. The limited ability of people living in poverty to access legal and adjudicatory processes and mechanisms is not only a violation of human rights in itself, but is also the consequence of numerous other violations. The lack of remedies for the negative impacts of social policy in the areas of health, housing, education, culture and social security often results in inability to seek redress in cases of violations of key human rights. People living in poverty, when encountering the criminal justice system, are deprived of the means to challenge the conditions of their arrest, remand, trial, conviction, detention and release.[8] As the Special Rapporteur on Extreme Poverty and Human Rights stressed:

> The inability of the poor to pursue justice remedies through existing systems increases their vulnerability to poverty and violations of their rights. In turn, their increased vulnerability and exclusion further hamper their ability to use justice systems. This vicious circle impairs the enjoyment of several human rights.[9]

11. There are many reasons that explain the particular vulnerability to enforced disappearance of people who live in poverty. Impoverished people may not seek justice in cases of enforced disappearances because they cannot afford the "cost of legal advice, administrative fees and other collateral costs".[10] In addition, those living in poverty may fear reprisal or sanction from more powerful actors and may not seek justice because of this fear and because of discriminatory practices by the authorities.[11] These factors contribute to the pattern of impunity which often surrounds enforced disappearances, which contributes to their future recurrence because there is no fear of accountability. In many instances, people living in extreme poverty are marginalized and located in areas with little or no State institutions present, where security forces tend to operate with less restraint than in more central, populated or urban areas.[12] These situational factors aggravate stereotypes and render people second class citizens, whose disappearance is often condoned, if not justified.

12. The lack of full enjoyment of particular economic, social and cultural rights also creates an enhanced vulnerability to enforced disappearance. For instance, a basic protection from enforced disappearance is removed when the right to housing is not guaranteed, because people do not have the physical barrier that homes provide against those who may want to harm them. In many conflicts, widespread destruction or State appropriation of homes and property has led to violations of the adequate standard of living, including forced evictions and the consequent increased exposure to enforced disappearance (E/CN.4/2006/56/Add.1, para. 30; and E/CN.4/2004/48, paras. 35–37).

13. States with inadequate legislation to protect housing or to provide recognition of legal establishments on certain territories to indigenous, rural, and ethnic-minority groups may leave these groups exposed to land-grabbing and forced evictions. Indigenous peoples, ethnic groups and rural workers on such land often do not have recourse or methods to challenge these seizures and may be left homeless or displaced. These violations or the resistance against them may lead to increased vulnerability to enforced disappearance.[13]

This report also highlights how 85 per cent of the disappeared persons lived in poverty, these victims lived in impoverished communities that represent only 9 per cent of the income of all families in that State.

[8] A/67/278.

[9] Ibid., para. 5. See also A/HRC/8/4, para. 26.

[10] Ibid., para. 17. See also A/HRC/8/4, para. 25.

[11] Ibid., para. 21.

[12] See footnote 4 above.

[13] See for instance the case of Mr. Porlagee "Billy" Rakchongcharoen, a community leader of the Karen indigenous peoples in Bangkloybon village, near Kaengkrachan national park, in Thailand, who disappeared after he was briefly detained on 17 April 2014 by the authorities of the park, allegedly

14. Children in vulnerable situations are also especially exposed to becoming victims of enforced disappearance.[14] Children, who lack access to the right to education, live in poverty, or in the streets or who have been displaced face greater risk of being abducted in order to be turned into child soldiers or trafficked for the purpose of exploitation.

15. Undocumented migrants are particularly vulnerable to enforced disappearances, due to their undocumented status and the lack of financial resources, effective laws, protection schemes, political, social and cultural participation, and judicial remedies available to them (A/HRC/19/58/Add.2 , para. 69).[15]

16. Likewise, persons with mental health problems may also be more exposed to becoming victims of enforced disappearance in certain contexts, including when institutionalized or when entering in contact with law enforcement officials (A/HRC/WGEID/101/1, para. 125).

B. Impact of enforced disappearances on the economic, social and cultural rights of the disappeared person

17. A person subjected to an enforced disappearance is deprived of his or her liberty and is placed outside the protection of the law.[16] Placing a person outside the protection of the law means that all protections, including those intended to secure economic, social and cultural rights, cease to exist (E/CN.4/1435, paras. 184–187; and A/HRC/19/58/Rev.1).

18. When forcibly disappeared, a person no longer earns wages or has access to employment. Therefore, the disappeared person's right to work is violated. The violation of the disappeared person's right to work may continue even after the person has been released, due to the stigma of having been subject to an enforced disappearance or due to mental or physical sequelae of the enforced disappearance. The assertion that the

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because he was carrying wild honey. Like in other national parks in northern Thailand, the Karen people, who were living in the area prior to the establishment of the park, are reportedly being forcibly evicted from their ancestral lands in the name of "conservation". See Observatory for the Protection of Human Rights Defenders, "We are not afraid Land rights defenders attacked for confronting unbridled development". The case of Mr. Porlagee is also outstanding with the Working Group (A/HRC/WGEID/103/1, para. 174).

[14] A/HRC/WGEID/98/1, para.3: "If State agents are involved with or support private groups, directly or indirectly, or consent or acquiesce to the activities of criminal organizations in the abduction or kidnapping of child migrants or in child trafficking, notably for the purpose of child labour, sexual exploitation or transfer of organs of the child, this may be considered, in certain circumstances, an enforced disappearance. Children living and/or working on the street and children placed in care institutions may also be in a particularly vulnerable situation, potentially becoming victims of enforced disappearance. The forced recruitment of child soldiers also places them in a potential situation of enforced disappearance, especially when they are recruited by armed groups distinct from the regular armed forces of a State but operating with the support, consent or acquiescence of the State".

See also Inter-American Court of Human Rights, Case of the "Street Children " (Villagran-Morales *et al.*) v. Guatemala, Judgment of November 19, 1999 *(Merits)*.

[15] See also UNICEF and National University of Lanus, Argentina, "Economic, Social and Cultural Rights of Migrant Children and Children Born to Migrant Parents: challenges, Good Practices and Recommendations" (2010), available from http://www.ohchr.org/Documents/Issues/MHR/Consultation2010/3a.UNICEF_ESCR_Migrants.pdf.

[16] The Declaration, art. 2.

disappeared person has engaged in illegal activity may intimidate others in the community in order to isolate the disappeared person from being employed again.[17]

19. Many disappeared people are detained in unofficial or secret places of deprivation of liberty, where they may be subject to torture, ill-treatment, sexual violence and other assaults to their physical and psychological integrity (A/HRC/13/42, para. 291). In these circumstances, their right to the enjoyment of the highest attainable standard of physical and mental health is also violated. For those who recover their liberty after being disappeared, the effects of these violations on their physical and psychological integrity and the right to health tend to have lasting effects. The full enjoyment of the right to health is highly affected by the State's direct or indirect actions and/or omissions during the enforced disappearance.

20. Although women and children represent a minority of the disappeared, their rights are disproportionately affected when this violation takes place.

21. Women who are forcibly disappeared are often "subject to gender-based violence such as physical and sexual violence, including rape" (A/HRC/WGEID/98/2, paras. 8 and 14). They also face specific health concerns because they may be pregnant or may become pregnant while in detention and disappeared. When women are detained in facilities that do not provide the required care for pregnancy, their right to health is also violated (A/HRC/WGEID/98/2, para. 9; and E/C.12/2000/4, para. 21). In these circumstances, States have the obligation to establish special protection measures for pregnant women who are detained (ibid.).

22. Children may be subjected to enforced disappearances or born during the captivity of their mothers, who were subject to enforced disappearance (A/HRC/WGEID/98/1, para. 2). In both cases, children are deprived of a series of economic, social and cultural rights, notably the right to education (ibid., para. 33). When born during the enforced disappearance of the mother, most of the time, documents attesting to their true identity are suppressed or altered, which places them outside the protection of the law and deprive them of essential rights.

C. Impact of enforced disappearances on the economic, social and cultural rights of the family or other dependants of the disappeared person

23. Enforced disappearances impact on the enjoyment of a number of rights by both the disappeared person and her or his family; these include the right to health, the right to education, the right to take part in cultural life, the right to social security, the right to property, the right to family life and the right to housing (A/HRC/22/45/Add.2, para. 81). These violations appear even more evidently when the person who is forcibly disappeared is the "breadwinner". The majority of those subject to enforced disappearances are men, often the primary or sole source of income in the family. Many of these men leave behind wives and families when they disappear; these family members are often socially stigmatized and, in particular, women whose husbands have disappeared often are ostracized in the community because their husbands are falsely accused of crimes, or because people fear associating with someone who has been the target of an enforced disappearance. Examples also include situations where wives refusing to behave as widows, notably through dress, are deprived of any clear role in their societies. They may also

[17] See E/CN.4/1983/14, para. 135: "After reappearance, the former missing person may find himself the subject of distrust and suspicion and may have to depend on charitable organizations for his subsistence."

become economic and sexual preys (A/HRC/WGEID/98/1). Furthermore, the mothers of persons who are disappeared may be socially stigmatized by being blamed for not taking proper care of their disappeared children (ibid., para. 11).

24. As the Working Group has observed:

> The emotional upheaval is thus exacerbated by material deprivation, made more acute by the costs incurred should they decide to undertake a search for their loved ones. Furthermore, they do not know when — if ever — their loved one is going to return, which makes it difficult for them to adapt to the new situation. In some cases, national legislation may make it impossible to draw a pension or receive other means of support in the absence of a death certificate. Therefore, economic and social marginalization is frequently the result of an enforced disappearance. In such circumstances, several economic, social and cultural rights enshrined in the Universal Declaration of Human Rights and in other instruments, such as the rights to health, education, social security, property and family life are violated (ibid., para. 12).

25. While the right to the protection of family life is a central violation that relatives suffer, the families of the disappeared also often face violations of their economic rights because they are denied benefits, wages, and social assistance to which the disappeared person is entitled. For example, the Constitutional Court of Colombia has heard several cases where family members brought actions for the lost wages of a disappeared family member. In particular, the Court held that the State and private employers should keep paying the disappeared person's salary throughout the period of the disappearance.[18]

26. Enforced disappearances entail the denial of the disappeared person's legal existence and, as a consequence, prevent him or her from enjoying all other human rights and freedoms. The disappeared is de facto deprived of his or her domicile and his/her properties become frozen in a legal limbo since no one, not even the next of kin, may dispose of that patrimony until the disappeared appears alive or is declared dead, that is a "non-person" (A/HRC/19/58/Rev.1, para. 2). One of the consequences of this situation is that relatives may also be denied their loved ones' pensions, access to bank accounts, and access to other means of support. In some circumstances this is due to the lack of a certificate of absence due to enforced disappearance (A/HRC/WGEID/98/1, para. 12).

27. The family's right to adequate housing may also be violated because the family may be ineligible to inherit the house they live in without a death certificate for the disappeared person. The right to adequate housing may be further violated when States have laws that preclude anyone but the male head of household from entering into large financial transactions such as purchasing a home.[19]

28. Fear of repercussions by authorities or the people responsible for the enforced disappearance may lead to the family being forced to relocate and move to a more secure location.[20] For many families, relocation means having to give up their homes, family and communities, livelihood, jobs and academic pursuits.

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[18] See, e.g., Constitutional Court of Colombia, Judgment T-1001/10 (6 December 2010); Constitutional Court of Colombia, Judgment C-400/03 (20 May 2003).

[19] Truth and Reconciliation Commission of South Africa Report, Vol. 5, (1998), available from http://www.justice.gov.za/trc/report/finalreport/Volume5.pdf.

[20] *Molina-Theissen v. Guatemala*, Judgment on the Merits, Inter-American Court of Human Rights, para. 40(13) (4 May 2004), available from http://www.corteidh.or.cr/docs/casos/articulos/seriec_106_ing1.pdf.

29. A disappearance may also result in a concomitant loss of educational rights for children of the disappeared person. Thus, in the case of enforced disappearances of the children's parents, many of the children's rights, including economic, social and cultural ones, are affected. In many occasions, children are prevented from exercising their rights due to the legal uncertainty created by the absence of the disappeared parent and many obstacles are created to children with regard to the enjoyment of their rights, including their right to education, health, social security and property (A/HRC/WGEID/98/1, para. 7).

30. The surviving parent may be unable to pay school fees or may need the older children to quit school and find work to provide financial support. Children of the disappeared may also avoid going to school due to the stigma of association with a disappeared person or because of the psychological trauma caused by the disappearance.

31. Both the economic hardships and the devastation of losing a family member to an enforced disappearance may cause families of the disappeared great emotional trauma that can lead not only to the violation of the right to family life but also to physical and psychological effects, violating the family's right to the highest attainable standard of physical and mental health (art. 12, International Covenant on Economic, Social and Cultural Rights). The effects of the disappearance on the physical and psychological health of the close relatives of the disappeared persons are "a drawn-out shock, a state of latent and prolonged crisis, in which the anguish and sorrow caused by the absence of the loved one continues indefinitely".[21]

32. In many cases, families of victims are not made visible and do not enjoy safe spaces that would enable them to articulate their experience in a culturally meaningful manner. This situation impacts their right to take part in cultural life (A/HRC/25/49).[22]

III. Enforced disappearances in retaliation against those working on the promotion and protection of economic, social and cultural rights

33. The practice of enforced disappearance is often used to repress and intimidate individuals claiming their rights (A/HRC/22/45, para. 33). The Working Group has in its docket several cases where the victims of enforced disappearance were active in exercising or promoting the enjoyment of economic, social and cultural rights, including trade union members, environmentalists, farmers, teachers, journalists and artists.[23] In such cases,

[21] E/CN.4/1983/14, para. 136, citing a report drawn up at the Second Latin American Congress of Relatives of Missing Persons (Caracas, 24-23 November 1981): "According to the report the reaction of relatives to a disappearance passes through several stages, the first being one of inaction due to fear or reprisals and to the uncertainty as to whether their actions in search of their missing relative might lead to his death. The next stage is that of trying individually to search for the missing person and the third stage is that of collective action. Feelings of despair are noted and often relatives have deep feelings of guilt either because they come to believe they were responsible for the disappearance or that they have not done enough in searching for the victim. The result may be the paralysis and social block of the relative and may lead to the rupture of the remaining family unit".

[22] See also Inter-American Court of Human Rights, case of *Chitay Nech et al. v. Guatemala*, 7 April 2000.

[23] E/CN.4/2006/56/Add.1, para. 55 (categorizing trade unions as one of the main targets of disappearance); A/HRC/13/31/Add.1, para. 18 (noting that the majority of the disappearances occurred between 1972 and 1980 and that some of the persons disappeared were students or trade unionists, while others were journalists or members of opposition political parties); A/HRC/19/58/Add.2, para. 66 (discussing human rights defenders' disappearances).

enforced disappearance is used as a repressive measure and a tool to deter the legitimate exercise, defence, or promotion of the enjoyment of economic, social and cultural rights.

34. The labelling of human rights defenders as rebels, insurgents or terrorists, or as "being against development" (A/68/262, para. 15) is often used to justify, condone or minimize human rights violations committed against them, including enforced disappearances (A/HRC/13/22, para. 27).

35. In regions where land-grabbing is a growing practice, many human rights defenders and protestors against such practices may also become victims of enforced disappearance.[24]

36. When an individual becomes a victim of enforced disappearance as a result of exercising or promoting economic, social and cultural rights, the enjoyment of those rights is also violated. For instance, the disappearance of a teacher who promoted cultural rights also interferes with the right to cultural life as well as the exercise of students' right to education (A/HRC/22/45, para. 69).

37. Human rights defenders are also targeted to intimidate and prevent others from claiming and exercising their rights. Enforced disappearance is a premeditated crime, thought of and conceived of in advance as a technique of terror, which has a chilling effect on those pursuing the enjoyment of their rights, including economic, social and cultural rights.[25] Enforced disappearances of human rights activists violate the economic, social and cultural rights of others engaged in related activities and of a larger community of people who relied on the disappeared person to represent and fight for their rights.[26] Threats of or actual cases of enforced disappearance may also be directed at people associated with the human rights defender.

38. The disappearance of a union leader, for instance, may lead to violations of the right to work or to unionize of other workers who may fear losing their jobs as a result of their union activity or facing retaliation in connection with their work-related claims. The workers may thus be unable to claim their economic, social and cultural rights due to their fear of becoming subject to an enforced disappearance.[27]

39. Additionally, when the disappearance of a person is a reprisal for his or her exercise of social, economic or cultural rights collectively with others, that particular right is also violated. For instance, the disappearance of a union leader due to her union activities

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A/HRC/WGEID/103/1, para. 174; A/HRC/WGEID/102/1, paras. 81–82 and 89; and A/HRC/WGEID/101/1, para. 37.

[24] In this category, emblematic is the case of Sombath Somphone, a human right activist working on issues of land confiscation and assisting victims in denouncing such practices, who disappeared in the Lao People's Democratic Republic on 15 December 2013. More than two years after his disappearance, his fate and whereabouts are still unknown. See A/HRC/WGEID/100/1, para. 45; and A/HRC/WGEID/103/1, para. 137.

[25] See also the press release of the Working Group jointly with other mandate holders, "A year on, the enforced disappearance of Sombath Somphone continues with impunity in Lao PDR" available from http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14103& (pointing out the chilling effect of the disappearance of a human rights defender on other human rights defenders in the country).

[26] See *Kawas-Fernández v. Honduras*, Merits, Reparations, and Costs, Judgment, Inter-American Court of Human Rights (ser. C) No. 196, para. 140 (3 April 2009), (describing an environmentalist's disappearance as "a violation of the freedom of association from a collective standpoint").

[27] See *Cantoral-Huamani and Garcia-Santa Cruz v. Peru*, Preliminary objection, Merits, Reparations, and Costs, Inter-American Court of Human Rights (ser. C) No. 167, para. 148 (10 July 2007) (describing the intimidating effect of a union leader's disappearance on other workers).

constitutes a violation of her right, and that of the other members of the trade union, to unionize.

40. Lastly, due to the collective character of certain economic, social and cultural rights, the disappearance of one person may have a negative effect on the larger community. One illustration is an enforced disappearance of a leader of a minority community and the impact that this may have on the exercise of the right to take part in cultural life of other members of the concerned community, which may be "strongly communal" and "can be only expressed and enjoyed as a community".[28] Such disappearances may also have an impact on the right to political participation and on the existence and protection of the society's cultural diversity, which is a condition for the exercise of all human rights.

41. The disappearance of indigenous community leaders, for instance, may prevent their communities from exercising their right to hold traditional funerals for the deceased and preserving the language, oral traditions, and religious ceremonies, therefore violating the communities' right to take part in cultural life.[29] The disappearance of community leaders as well as other community figures may be particularly harmful because of their knowledge about the cultural heritage and role as those with the responsibility to pass on traditions and practices with the community.[30]

IV. The 1992 Declaration on the Protection of All Persons from Enforced Disappearance, and economic, social and cultural rights

42. The Declaration offers the starting point for an analysis of the relationship between enforced disappearances and economic, social and cultural rights. Article 1.2 of the Declaration states "Any act of enforced disappearance… constitutes a violation of the rules of international law guaranteeing, inter alia, the right to recognition as a person before the law, the right to liberty and security of the person and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment. It also violates or constitutes a grave threat to the right to life." While this wording appears to be limited to violations of traditionally conceived civil and political rights, the expression "inter alia" means that there are other rights that are also violated in the context of an enforced disappearance, including economic, social and cultural rights. Paragraph 1 of the same article states, "Any act of enforced disappearance is… condemned as a… grave and flagrant violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights." In other words, when an enforced disappearance takes place, all the rights contained in the Universal Declaration may be affected. Given this framework and the key obligations to prevent, eradicate, punish and provide

[28] Committee on Economic, Social and Cultural Rights, General comment No. 21 on the "right of everyone to take part in cultural life" (art. 15, para. 1(a), of the International Covenant on Economic, Social and Cultural Rights), para. 36 (21 December 2009), E/C.12/GC/21.

[29] Preliminary Observations of the Inter-American Commission on Human Rights after the Visit of the Working Group on the Rights of the Afro-Descendants and Against Racial Discrimination to the Republic of Colombia, para. 60, available from http://www.cidh.oas.org/countryrep/ColombiaAfrodescendientes.eng/ColombiaAfros2009cap3-4.eng.htm: "In cases in which members of communities have been targeted in attacks as a result of defending collective rights to land and opposing the hostile occupation of their lands by persons with economic interests or parties in the conflict, the families or community members face an additional risk or are prevented altogether from providing a proper burial, holding a wake for the dead, and other funerary practices."

[30] Ibid.

reparations for enforced disappearances,[31] the Working Group considers that among the legal obligations of States is the analysis of the causes of enforced disappearances and of the context in which they take place. As such, in order to effectively address enforced disappearances in a holistic way, the Declaration requires understanding the connection between enforced disappearances and economic, social and cultural rights.

43. Under the Declaration, States are required to prevent, eradicate and punish enforced disappearance. They are also required to provide reparation, social assistance and rehabilitation to the family of the disappeared. The measures discussed below in relation to these obligations are not exhaustive of the measures the State must take, as stated in article 21 of the Declaration.[32]

44. Measures to prevent, eradicate and provide reparations for enforced disappearances must also target the underlying situation that led to vulnerability to enforced disappearance, and that allowed violations of economic, social and cultural rights after the enforced disappearance. Consideration of the underlying situation requires that all the measures to secure the prevention, eradication, investigation, punishment, reparation and guarantees of non-repetition of enforced disappearances take into consideration all the factors leading to enforced disappearances, including the identification of those who could potentially benefit thereof, and all the rights that resulted violated thereto.

A. State obligation to prevent, investigate and punish enforced disappearances through the promotion and protection of economic, social and cultural rights

45. Under the Declaration, States have an obligation to prevent enforced disappearances, by taking effective legislative, administrative, judicial or other measures (art. 3). For the prevention of enforced disappearance, it is of utmost importance that any enforced disappearance is considered as a criminal offence under the criminal law punishable by appropriate penalties (art. 4).

46. Also related to the obligation to prevent is article 9 of the Declaration, which provides, "The right to a prompt and effective judicial remedy as a means of determining the whereabouts or state of health of persons deprived of their liberty and/or identifying the authority ordering or carrying out the deprivation of liberty is required to prevent enforced disappearances under all circumstances." Article 9 clearly makes the connection between an effective remedy and the protection of economic, social and cultural rights, as it requires an effective remedy not only to determine the whereabouts of the person, but also to determine the "state of health" of the person. This obligation requires that the State search for the person be conducted with a view towards protecting the person's right to health and physical and psychological integrity, among others.

47. Protective measures for economic, social and cultural rights should be adopted in order to have a framework to prevent enforced disappearances or address them in the event they occur; these measures should be taken even if the State does not have a history or a high record of enforced disappearance (E/CN.4/1996/38, para. 49).

48. As poverty increases, in certain contexts, the risk of being subjected to enforced disappearance. States must take effective measures to alleviate and avoid situations of

[31] The Declaration, arts. 2 and 19.

[32] The Declaration, article 21: "The provisions of the present Declaration are without prejudice to the provisions enunciated in the Universal Declaration of Human Rights or in any other international instrument and shall not be construed as restricting or derogating from any of those provisions".

poverty as a preventive measure to enforced disappearances. Likewise, as social security plays "an important role in poverty reduction and alleviation, preventing social exclusion and promoting social inclusion" (E/C.12/GC/19, para. 3), States should take legislative and other measures to ensure that social security benefits are unconditionally available to those who need it, including those facing unemployment and especially relatives of persons who disappeared (E/C.12/DZA/CO/4, para. 13). In addition, the creation of judicial, quasi-judicial, administrative and political mechanisms that include the participation of marginalized groups and the development of the necessary conditions for marginalized groups to participate in cultural life and promote an inclusive society, are essential to ensure that ensuring economic, social and cultural rights are upheld and for the prevention of enforced disappearances (ibid.).

49. In general, ensuring the existence of and respect for cultural diversity and the existence of space where multiple opinions, positions and interpretations of history can find their expression in the public sphere diminishes the level of vulnerability of those questioning in one way or another mainstream ideas and positions, and so prevents against targeting of human rights defenders.

50. The Declaration also requires States to ensure that victims of enforced disappearance have an effective remedy that involves serious and impartial investigation to identify the persons responsible and to impose the appropriate penalties. States are required to ensure anyone with knowledge or a legitimate interest who alleges that someone has been subjected to an enforced disappearance has the right to complain to an independent State authority, and to have that complaint investigated (art. 13).

51. The right to submit a complaint and obtain a full and effective investigation must be ensured, especially for those who do not have adequate resources to travel or hire legal assistance in order to file such complaints or investigate the disappearance. Complaint mechanisms must be available and accessible to all, and the necessary information on how to seize them should be widely disseminated. This is essential to prevent potential perpetrators of enforced disappearances from relying on States' discrimination against vulnerable groups in order to carry on with the disappearances and/or escape prosecution. This is strictly related to the States' obligation to enact legislation criminalizing enforced disappearances under article 4 of the Declaration and punish it with appropriate penalties, which shall take into account the extreme seriousness of the crime.

52. In order to meet this obligation, States must not only create the necessary mechanisms, but also implement them effectively and without any discrimination. Steps to ensure that officials do not abuse their power and ignore the victim's right to have the complaint investigated include: procedures of investigation that articulate every step that must be taken; time limits for the investigations and for each step of the process; criminal prosecution for officials who obstruct justice or fail to follow the procedures of investigation; the possibility of civil suits against officials who obstruct justice or fail to follow procedures; and the dismissal of authorities who abuse their power and fail to properly investigate claims and share information with family members of the disappeared.[33] If a State does not have the institutions or resources to properly monitor investigations, these institutions should be created. Otherwise actors, including relevant international organizations or other States, should be allowed to provide assistance as established by article 2 of the Declaration. In particular, States should adopt all the necessary measures and concrete actions with a view to ensuring that the economic factor does not limit the access to justice to victims of enforced disappearances.

[33] See *Huilca-Tecse v. Peru*, Merits, Reparations, and Costs, Judgment, Inter-American Court of Human Rights (ser. C) No. 121, 3 March 2005, para. 7.

53. Adequate investigations under article 13 and criminalization of enforced disappearances under article 4 are crucial to avoid impunity on enforced disappearances and foster accountability. States must hold officials and authorities accountable for the actions and omissions that discriminate against poor people and exasperate their already vulnerable positions.[54]

54. The obligation under article 13 of the Declaration includes the duty to investigate the economic, social and cultural rights affected, as well as the circumstances of the enforced disappearance itself. Similarly, when a disappearance occurs as retaliation for the promotion or exercise of economic, social or cultural rights, this should be properly and impartially investigated. Highlighting those connections through criminal investigations is essential to break patterns of impunity and prevent similar events.

55. Victims of enforced disappearance who do not have economic means to obtain information or a prompt remedy may be denied their rights under the Declaration. As it has been already illustrated by other special procedures mandate holders (A/67/278, para. 17; and A/HRC/8/4, para. 26), in general, victims who live in poverty lack access to justice because they do not have the economic means to pursue it, as financial factors take on even more importance when they compound other social, cultural or employment factors and lead to marginalization and social exclusion. Access to justice has a global nature as it extends to the effective exercise of all human rights as a whole. It is not enough to provide access to justice: States must also actively remove existing obstacles thereto (A/67/278, para. 12).

56. In its General Comment on Women affected by enforced disappearances, the Working Group observed that "States must acknowledge the obstacles women face in obtaining effective judicial remedies and take all appropriate steps to eliminate these obstacles. These measures should address inequality of access to States' institutions by women, including linguistic, economic and cultural barriers" (A/HRC/WGEID/98/2, para. 29). Similarly, the Committee on Economic, Social and Rights has expressed concern about States requiring families of the disappeared to choose between social security benefits and access to justice, and has recommended that access to each be unconditional as this choice can act as an obstacle to justice for people who are in great need of economic support.[55]

57. Additionally, as highlighted by the Special Rapporteur in the field of cultural rights, measures should be adopted, including through cultural interventions, which would help make the victims visible (A/HRC/25/49, paras. 47 and 66).

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[54] OHCHR, *Principles and Guidelines for a Human Rights Approach to Poverty Reduction Strategies*, United Nations Document HR/PUB/06/12, paras. 21, 24, 75-79 (defining an accountability procedure as a mechanism "by which duty-bearers are answerable for their acts or omissions in relation to their duties").

[55] Committee on Economic, Social and Cultural Rights, Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant, E/C.12/DZA/CO/4, para.15 (21 May 2010) "The Committee is concerned that the access families of disappeared persons to social security *benefits*, including pension and child education benefits, is made conditional upon the family obtaining a court declaration that the disappeared relative has died."

B. State obligation to provide adequate reparation and social assistance to the families for violations of economic, social and cultural rights as a result of enforced disappearances

58. According to article 19 of the Declaration, victims of enforced disappearance "shall obtain redress and shall have the right to adequate compensation, including the means for as complete a rehabilitation as possible" (see also A/HRC/16/48/Add.1, para. 45).

59. The right to obtain redress for acts of enforced disappearances includes, among others, medical and psychological care, and guarantees of employment or property. In the General Comment on article 19 of the Declaration, the Working Group established a wide interpretation of the right to obtain redress for acts of enforced disappearance, including "medical and psychological care and rehabilitation for any form of physical or mental damage as well as to legal and social rehabilitation, guarantees of non-repetition, restoration of personal liberty, family life, citizenship, employment or property, return to one's place of residence and similar forms of restitution, satisfaction and reparation which may remove the consequences of the enforced disappearance" (E/CN.4/1998/43, para. 68; see also A/HRC/22/45, paras. 46 *et seq.*). If enforced disappearances take place, States have an obligation to provide prompt, adequate and effective reparation to victims. In addition, article 24 of the International Convention for the Protection of All Persons From Enforced Disappearance states "Without prejudice to the obligation to continue the investigation until the fate of the disappeared person has been clarified, each State Party shall take the appropriate steps with regard to the legal situation of disappeared persons whose fate has not been clarified and that of their relatives, in fields such as social welfare, financial matters, family law and property rights". Reparations must be holistic and include consideration of all the rights violated. As such, reparations programmes and measures should consider how enforced disappearances violate economic, social and cultural rights. Adequate compensation must be proportionate to the gravity of the human rights violation and to the suffering of the victims (E/CN.4/1998/43, para. 73; and A/HRC/22/45, paras. 46 *et seq.*).

60. In a number of countries, reparation is interpreted exclusively as compensation in form of a sum of money intended to compensate material and non-material damages caused to victims. Redress to victims should not, however, be limited to monetary compensation. It should include medical and psychological care and legal and social rehabilitation for any form of physical or mental sequelae. Measures should also be taken to ensure that members of families of disappeared persons are entitled to social benefits and other measures of social support, including health care, special education programmes and psychological assistance (A/HRC/22/45, paras. 53–54 and 59). Those measures should be conceived as reparations for the human rights violations that the victims of an enforced disappearance suffered.

61. Rehabilitation is particularly relevant in the context of violation of economic, social and cultural rights, and rehabilitation measures and programmes should be established and be easily accessible for victims and their families. The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (Basic Principles, General Assembly Resolution 60/147) provide that rehabilitation should include medical and psychological care as well as legal and social services,[36] and that the particular

[36] Principle 21. In the *Barrios Altos case* (*Chumbipuma Aguirre et al. v. Peru*), 2001, para. 40, the Inter-American Court of Human Rights approved the agreement signed by the State and the victims wherein the State recognized its obligation to provide diagnostic procedures, medicines, specialized

circumstances and needs of each victim must be taken into account when providing psychological or psychiatric treatment. The treatment may be individual, collective or family.

62. The Basic Principles make specific reference to enforced disappearance in the context of satisfaction measures emphasizing that the search for the whereabouts of the disappeared, for the identities of the children abducted, and for the bodies of those killed, and assistance in the recovery, identification and reburial of the bodies should be carried out "in accordance with the expressed or presumed wish of the victims, or the cultural practices of the families and communities" (principle 22 (c)).

63. Under article 17 of the Declaration, States are also required to recognize the continuing nature of the offence of enforced disappearance, which should extend to how the continuous nature of the offense affects the full rehabilitation of the victims. For example, the Working Group has noted that the enforced disappearance of a child has consequences even after the age of the majority is reached (A/HRC/WGEID/98/1, para. 4). Similarly, the Working Group, in reference to the health needs of the victims of enforced disappearance, has noted in one of its country visit reports the importance of comprehensive health care programmes, given that the passage of time affects individual situations and these programmes must reflect the different health needs of victims of enforced disappearance during different stages of their lives (A/HRC/22/45/Add.1, para. 46). In other words, the reparations for the violations of the right to health or other economic, social and cultural rights should consider the continuous nature of an enforced disappearance.

64. The Working Group has also noted that children's right to education is often affected by the harm resulting from enforced disappearances. As a measure of rehabilitation, reparation programmes should include access to education for child victims of enforced disappearances (A/HRC/WGEID/98/1, para. 33). Reparation for the violation of the right to education may also include: scholarships, which address not only the right to education but the violations of economic rights that leave victims of enforced disappearances without the resources to attend university; adult education programmes that provide certificates or degrees to those who are no longer eligible to attend primary or secondary schools; and measures that allow victims to return to school without having completed prior years of education.

65. The right to work provides another example. This right, as guaranteed in the International Covenant on Economic, Social and Cultural Rights, affirms the obligation of States parties to assure individuals their right to freely chosen or accepted work, including the right not to be deprived of work unfairly (art. 6). Reparations must be provided to victims of enforced disappearances in order to remedy the violation of their right to work and for the consequences produced by this situation. This includes reparations for the disappeared who lost the job and wages, as well as reparation for family members of the disappeared who have difficulty finding work due to cultural beliefs, stigma, or due to the physical, mental and psychological harm produced by the disappearance. Also, States must secure that the wages that the disappeared person was earning continue to be received by the relatives until a permanent and adequate reparation scheme is provided.

66. Reparation should be applied in a broad sense and must be granted for any damage resulting from an enforced disappearance, such as physical or mental harm, lost opportunities, material damages and loss of earnings, harm to reputation and costs required for legal or expert assistance (A/HRC/22/45, para. 58). Reparations must also take into consideration how the loss of the disappeared person's job will affect his or her job

aid, hospitalization, surgeries, labouring, traumatic rehabilitation and mental health.

prospects upon release, any societal damage or stigma that will hinder the disappeared person from integrating back into society.

67. States should also take steps to provide satisfaction to victims and to preserve the memory of the disappeared, making clear that it will not condone or allow enforced disappearances to be used as retaliation for exercising or promoting economic, social and cultural rights. Memory can be preserved in the form of courses in schools or universities that teach students about the disappeared,[17] public plaques, memorials or national holidays dedicated to the disappeared. In this respect, the Special Rapporteur in the field of cultural rights stressed the importance of a setting out the conditions to ensure a multi-perspective approach in history teaching and memorialization processes (A/68/296 and A/HRC/25/49). Such acts by the State are important because they openly recognize the victims of enforced disappearance and the economic, social and cultural rights the victim pursued.[18] All memory policies should highlight, whenever it is required, the link between enforced disappearances and economic, social and cultural rights. Memorial initiatives should make explicit how the violation of economic, social and cultural rights could be both a cause and a consequence of an enforced disappearance.

68. In securing cultural rights, any form of reparation must be ensured in a culturally sensitive manner, and reparation plans or mechanisms should be designed with the participation of the persons and communities affected, taking into account their language, values, customs and right to take part in the policies that concerns them.[19]

C. Social and other assistance

69. The issue of reparation and monetary compensation should be clearly distinguished from the social and other protection measures provided to the families to cope with the dire consequences of the absence of the main breadwinner (A/HRC/22/45/Add.2, para. 82), such as, for instance, the provision of legal aid to be able to seek justice, to search for the whereabouts of the person or to seek reparation.

70. States should also guarantee social security rights to the family of the disappeared and take special measures to ensure that those families receive social support, including health care, special education programmes and psychological assistance, without discrimination (A/HRC/16/48/Add.1, para. 84). The Working Group recommended the "establishment of mechanisms providing for social allowances or appropriate social and medical measures for relatives of disappeared persons in relation to the physical, mental and economic consequences of the absence of the disappeared" (A/HRC/22/45 Add.2, para. 83), emphasizing that — in accordance with article 19 of the Declaration — in no case should the acceptance of financial support for members of the families be regarded as a waiver of the right to adequate, prompt and effective reparation for the damage caused by the crime of enforced disappearance (ibid., para. 84).

71. In some States, only the breadwinner holds the right to social security; if that person is the victim of an enforced disappearance, the family loses that benefit and its economic situation worsens. A legislative framework should be put in place to regulate the effects of a disappearance on the economic, social and cultural rights of the relatives of the disappeared person. The State should adopt appropriate measures to ensure that the family and/or other dependants of a person who disappears continues to have the right to wages,

[17] *Huilca-Tecse v. Peru*, Merits, Reparations, and Costs, Judgment, Inter-American Court of Human Rights (ser. C) No. 121, 3 March 2005, para. 31.

[18] See A/HRC/22/45, paras. 53, 64 and 66.

[19] Ibid., para. 68. See also, for example, A/HRC/25/49, para. 41.

social security and access to health and that these rights are properly protected and secured as appropriate. For instance, protection of housing rights may require access to the bank account of the disappeared, halting of foreclosure proceedings, and access to special lines of credit. Access to bank accounts may be provided in an indirect manner to allow the families of the disappeared to use the assets while protecting the interests of the disappeared person. According to ICRC:

> The legal interests of missing persons should be adequately protected through designation of an appropriate representative on his/ her behalf. The designation can be made in the declaration of absence… There may be a suitable person such as a spouse or parent who can deal with these issues alone provided the ability to do has official recognition, via registration or otherwise.[40]

72. The services to be provided need to be adaptable and of quality, which means that they need to be adjusted to the relevant needs and cultural values of the population, including the specific health, education, housing and other needs of the disappeared persons and their relatives.

V. Conclusions and recommendations

73. **This study shows the indivisibility between economic, social and cultural rights and civil and political rights in the case of enforced disappearances.**

74. **Enforced disappearance, by its nature, violates economic, social and cultural rights of the disappeared person, of his or her family, and of others. Additionally, those who lack the full enjoyment of economic, social and cultural rights are, in many instances, more vulnerable to becoming victims of enforced disappearance.**

75. **People who are active in promoting or exercising the enjoyment of economic, social and cultural rights are, in many contexts, at a greater risk of becoming victims of enforced disappearance. In such circumstances, enforced disappearances are used as a tool to deter people from promoting and exercising economic, social and cultural rights; this deterrence leads to violations of the rights of the disappeared, others engaged in related activities and the larger community, because of the chilling effect of enforced disappearances.**

76. **Under the Declaration, States have an obligation to prevent and eradicate enforced disappearances and to provide reparations to all victims of enforced disappearances, taking into account the intrinsic connection between enforced disappearances and economic, social and cultural rights.**

77. **The prevention of enforced disappearances is an essential element for the protection of economic, social and cultural rights; conversely, the protection of economic, social and cultural rights is, at the same time, an essential element for the prevention of enforced disappearances. Effective measures to prevent and eradicate enforced disappearances require a comprehensive approach that encompasses proper promotion and protection of economic, social and cultural rights.**

78. **The study did not pretend to cover all the issues related to the connections between enforced disappearances and economic, social and cultural rights. It only attempted to provide an initial analytical framework on how to underscore those connections and how to address them from a holistic point of view.**

[40] ICRC, *Guiding Principles/ Model Law on the Missing* (Geneva, 2009), p. 20.

79. **In light of the above, the Working Group presents the following preliminary recommendations to States, which are only intended to guide the dialogue and responses. The recommendations presented are not envisioned to serve as a complete programmatic model, but only to provide examples on how to adopt measures linking enforced disappearances to the violations of economic, social and cultural rights. Based on these considerations, the Working Group recommends that States:**

(a) Adopt administrative, judicial and legislative measures in order to protect and foster the economic, social and cultural rights of people in disadvantaged situation, notably those living in poverty, as a preventive measure against enforced disappearances;

(b) Facilitate access to justice to disadvantaged groups, in order to curb impunity for enforced disappearances and prevent their recurrence;

(c) Provide disappeared persons with adequate accompanying measures, such as vocational training, so that they can reintegrate in social and cultural life and regain employment once the disappearance is ceased;

(d) Provide medical treatment, for mental and physical health, to the victims for any injury or illness they contracted as a result of the enforced disappearances, including post-traumatic stress;

(e) Protect social security to support the families after the disappearance of the breadwinner;

(f) Take measures to prevent and remedy the social stigmatization and isolation of disappeared persons and their family, by means of information and sensitization campaigns or other relevant measures;

(g) Eliminate elements in laws and policies, as well as in their implementation, that prevent families of the disappeared to access or maintain their right to adequate housing;

(h) Ensure the safety of the families of the disappeared in their homes and on their land, regardless of the type of tenure, against forced evictions, threats and harassment;

(i) Adopt preventive and protective measures to ensure that human rights defenders working on the promotion and protection of economic, social and cultural rights are protected from threats, intimidations and reprisals, including their labelling as rebels, insurgents or terrorists;

(j) Investigate, prosecute and punish enforced disappearances of human rights defenders working on the promotion and protection of economic, social and cultural rights. The investigation should include an analysis of the economic, social and cultural rights affected by the enforced disappearances, as well as of the circumstances of the enforced disappearance itself. Similarly, when a disappearance occurs as a reprisal for the exercise of economic, social or cultural rights, this should be properly investigated and punished;

(k) Provide prompt, adequate and effective reparation for violations of the economic, social and cultural rights resulting from an enforced disappearance;

(l) Clearly distinguish integral reparation from the social and other protection measures that should be provided to the families to cope with the dire consequences of the absence of the main breadwinner;

(m) Ensure that memorial policies contribute to providing symbolic reparation and public recognition to the victims of enforced disappearance in ways that respond to their needs and contribute to their healing.

80. **The Working Group encourages all relevant stakeholders to further study the relationship between enforced disappearances and economic, social and cultural rights.**